

**Stackpole Corporation and International Union of  
Electrical, Radio and Machine Workers, Local  
502, AFL-CIO-CLC. Case 6-CA-16105**

19 July 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

On 27 March 1984 Administrative Law Judge James L. Rose issued the attached decision. The Charging Party filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

**DECISION**

**STATEMENT OF THE CASE**

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me on December 19, 20, and 21, 1983, at Ridgeway, Pennsylvania, on the General Counsel's complaint<sup>1</sup> alleging generally that the Respondent violated Section 8(a)(1), (3), and (5) and Section 8(d) of the National Labor Relations Act, by subcontracting certain work during the term of a collective-bargaining agreement with the Charging Party.

The General Counsel's theory of a violation in this matter rested solely on the Board's decision in *Milwaukee Spring Division of Illinois Coil Spring Co.*, 265 NLRB 206 (1982) (*Milwaukee Spring I*).

Following the close of the hearing, the Respondent filed a motion to dismiss on grounds that the Board overruled *Milwaukee Spring I* and held that the type of viola-

tion alleged in this complaint was not an unfair labor practice. *Milwaukee Spring Division*, 268 NLRB 601 (1984) (*Milwaukee Spring II*).

Although the General Counsel initially filed a motion in opposition to the Respondent's motion to dismiss, on March 12, 1984, the General Counsel withdrew this opposition and filed his own motion to dismiss based on the Board's decision in *Milwaukee Spring II*.

On March 14, 1984, the Charging Party (by counsel) filed an opposition to the General Counsel's motion to dismiss the complaint contending that *Milwaukee Spring II* was incorrectly decided; and in any event, the new policy should not be applied retroactively because the Board did not say it should. Therefore, inasmuch as the facts in this case occurred prior to the Board's decision in *Milwaukee Spring II*, and at a time when the Respondent's acts would have been in violation of the Act, the case ought not be dismissed.

The Union's objection to the motions to dismiss by the General Counsel and the Respondent must be overruled. First, all parties agree that the facts in this matter establish an unfair labor practice only to the extent such was found in *Milwaukee Spring I* and with the overruling of *Milwaukee Spring I*, the legal predicate for finding of an unfair labor practice no longer exists. I am, of course, bound by the Board's decision in *Milwaukee Spring II*.

Further, it is the Board's policy to apply retroactively any changes in the substantive law to all cases pending before it, even though the Board's decision in overruling a prior case may be silent on this point.<sup>2</sup>

Accordingly, I conclude that the motions to dismiss filed by the Respondent and the General Counsel ought to be sustained, and the Charging Party's opposition thereto overruled.

On these findings of fact and conclusions of law and on the entire record I issue the following recommended<sup>3</sup>

**ORDER**

The complaint is dismissed in its entirety.

<sup>2</sup> See, e.g., *Serendipity-Un-Ltd. & Tigerrr, Inc.*, 263 NLRB 768 (1982), where the administrative law judge found unlawful the discharge of a supervisor based on precedent overruled after his decision in *Parker-Robb Chevrolet*, 262 NLRB 402 (1982). The Board applied *Parker-Robb* to the case before it and reversed the judge on this point.

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>1</sup> On a charge filed January 25, 1983, and amended on May 27, 1983, a complaint issued on May 27, 1983.